

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT		1. CONTRACT ID CODE		PAGE OF PAGES 1 10	
2. AMENDMENT/MODIFICATION NO. 004		3. EFFECTIVE DATE 10/07/2009		4. REQUISITION/PURCHASE REQ. NO.	
5. PROJECT NO. (If applicable)		6. ISSUED BY CODE KSC NASA/John F. Kennedy Space Center Office of Procurement MAIL CODE OP KENNEDY SPACE CENTER FL 32899		7. ADMINISTERED BY (If other than Item 6) CODE KSC NASA/Kennedy Space Center Office of Procurement MAIL CODE OP KENNEDY SPACE CENTER FL 32899	
8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and ZIP Code)		(x) 9A. AMENDMENT OF SOLICITATION NO. NNK09275664R		9B. DATED (SEE ITEM 11) 07/24/2009	
CODE		FACILITY CODE		10A. MODIFICATION OF CONTRACT/ORDER NO.	
				10B. DATED (SEE ITEM 13)	

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

☒ The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers ☐ is extended. ☒ is not extended.
Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods: (a) By completing Items 8 and 15, and returning 1 copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGEMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required)

13. THIS ITEM ONLY APPLIES TO MODIFICATION OF CONTRACTS/ORDERS. IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

CHECK ONE	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.
	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:
	D. OTHER (Specify type of modification and authority)

E. IMPORTANT: Contractor ☐ is not. ☐ is required to sign this document and return _____ copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)

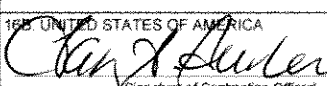
INCO TERMS 2: DESTINATION

The purpose of this amendment is to make the following changes to the Final RFP:

1) Section B.9 Special Cost Requirements: Updated clause to clarify Transfer of Accrued Sick Leave in paragraph (d) (Pages 24 and 24.1)

2) Section H.6, H.7, H.8, H.43 and H.44: H.6, H.7, H.8 are marked Reserved. H.6 NFS 1852.228-72 Cross-Waiver of Liability for Space Shuttle Services (SEP 1993) has been deleted in its entirety; H.7 NFS 1852.228-76 Cross-Waiver of Liability for Space Station Activities (DEC 1994) has been deleted and replaced with H.43 NFS 1852.228-76 Cross-Waiver of Liability for International Space Station Activities (DEVIATION) and H.8 NFS 1852.228-78 Continued ...

Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print)		16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) Tammy S. Burlein	
15B. CONTRACTOR/OFFEROR (Signature of person authorized to sign)	15C. DATE SIGNED	15D. UNITED STATES OF AMERICA  (Signature of Contracting Officer)	16C. DATE SIGNED 10/7/09

CONTINUATION SHEET	REFERENCE NO. OF DOCUMENT BEING CONTINUED	PAGE	OF
	NNK09275664R/004	2	10

NAME OF OFFEROR OR CONTRACTOR

ITEM NO. (A)	SUPPLIES/SERVICES (B)	QUANTITY (C)	UNIT (D)	UNIT PRICE (E)	AMOUNT (F)
	<p>Cross-Waiver of Liability for NASA Expendable Launch Vehicle Launches (SEP 1993) has been deleted and replaced with H.44 NFS 1852.228-78 Cross-Waiver of Liability for Science or Space Exploration Activities Unrelated to the International Space Station (DEVIATION) (Page 48, 69.4, 69.5, 69.6 and 69.7)</p> <p>3) Section H.22 Work for Others: Updated payment address in Paragraph (c)(2)(ii) to NSSC (Page 55)</p> <p>Replacement pages 24, 24.1, 48, 55, 69.4, 69.5, 69.6 and 69.7 with changes annotated are attached.</p>				

Fringe Rate: _____ *

Overhead Rate: _____ *

G&A Rate: _____ *

* To be completed by offeror as part of the Model Contract

(c) Fringe Benefits

The Contractor shall inform the Contracting Officer of all proposed changes in fringe benefits which may result in an increased cost to the contract as soon as practicable, but in any event, prior to such changes being implemented. Fringe benefits costs shall comply with FAR 31.205-6(m). Fringe benefits include, but are not limited to, such items as health insurance, life insurance, pension plans, retiree health care, savings plans, bonus plans, education assistance and leave policies. Failure to comply with the terms of this clause may result in the disallowance of costs. Any payment for unused accrued sick leave shall be considered expressly unallowable under this contract.

(d) Transfer of Accrued Benefits

- (1) The Contractor shall accept transfer of accrued sick leave balances earned and unused by incumbent employees performing the same or similar work on a NASA contract at KSC (and unpaid by the predecessor contractor/employer), provided the employee had no break in service from that previous NASA contract exceeding 60 days prior to their hire for service under this contract.
- (2) The Contractor shall recognize the sick leave and vacation leave accrual rates of incumbent contract personnel, provided the employee had no break in service from the incumbent NASA contract at KSC exceeding 60 days prior to their hire for service under this contract.
- (3) Costs associated with transferred sick leave hours (whether accomplished at the direction of the above paragraph (d)(1) or for other reasons) shall be allowable costs for reimbursement under this contract only when used by the employee, and shall be allowable only to the extent used by the employee to receive pay for hours off work for approved medical purposes during a duty tour. All other lump sum or other sick leave payments for transferred sick leave shall be expressly unallowable costs under this contract.
- (4) The provisions in paragraphs (d)(1) and (d)(2) will "sunset" one year following transition of the last requirements currently performed under the KSC "Checkout, Assembly and Payload Processing Services" (CAPPS) contract to the EGLS contract. Notwithstanding any "sunset," any leave balances previously transferred in accordance with paragraph (d)(1) prior to its expiration will continue to be valid and recognized until the earlier of the end of

the EGLS contract or the leave's exhaustion through use, and the provisions and limitations in paragraph (d)(3) will continue through the EGLS contract.

(e) Contract Expiration and Severance Pay

Severance pay shall be allowable as provided by FAR 31.205-6(g). However, termination of employment related to contract expiration shall not be considered to be an involuntary termination as defined by FAR 31.205-6(g). Accordingly, any payment in addition to regular salaries and wages that is made as a result of or in connection with the expiration of any basic, option, or extended period of contract performance shall be an unallowable cost. Any termination effective within 60 days of contract expiration shall be presumed to be a result of or in connection with contract expiration.

(f) Relocation Costs

SECTION H - SPECIAL CONTRACT REQUIREMENTS

Per Section I clause, FAR 52.252-2 *Clauses Incorporated by Reference*, the following clauses are incorporated by reference with associated fill-in information as shown:

H.1 NFS 1852.208-81 RESTRICTIONS ON PRINTING AND DUPLICATING. (NOV 2004)

H.2 NFS 1852.223-70 SAFETY AND HEALTH. (APR 2002) (DR 2.1-1, *Safety and Health Plan*)

H.3 NFS 1852.223-75 MAJOR BREACH OF SAFETY OR SECURITY. (FEB 2002)

H.4 NFS 1852.223-76 FEDERAL AUTOMOTIVE STATISTICAL TOOL REPORTING. (JUL 2003)

H.5 NFS 1852.225-70 EXPORT LICENSES. (FEB 2000)

(b) The Contractor shall be responsible for obtaining export licenses, if required, before utilizing foreign persons in the performance of this contract, including instances where the work is to be performed on-site at NASA John F. Kennedy Space Center, where the foreign person will have access to export-controlled technical data or software.

H.6 RESERVED

H.7 RESERVED

H.8 RESERVED

H.9 NFS 1852.235-73 FINAL SCIENTIFIC AND TECHNICAL REPORTS. (DEC 2006)

H.10 NFS 1852.244-70 GEOGRAPHIC PARTICIPATION IN THE AEROSPACE PROGRAM. (APR 1985)

H.11 NFS 1852.246-70 MISSION CRITICAL SPACE SYSTEM PERSONNEL RELIABILITY PROGRAM. (MAR 1997)

H.12 NFS 1852.247-71 PROTECTION OF THE FLORIDA MANATEE. (MAR 1989)

Full Text Clauses:

H.13 NFS 1852.209-71 LIMITATION OF FUTURE CONTRACTING (DECEMBER 1988)

(a) The Contracting Officer has determined that this acquisition may give rise to a potential organizational conflict of interest. Accordingly, the attention of prospective offerors is invited to FAR Subpart 9.5--Organizational Conflicts of Interest.

(b) The nature of this conflict is: NASA KSC will issue a solicitation in the near future for an Engineering Support Contract (ESC). The ESC may be frequently tasked to independently

- (A) Rent or other appropriate consideration for use of Government property in accordance with FAR 45.403 and FAR 45.404(c);
 - (B) Actual cost of Government personnel directly supporting a project (including payroll additives, fringe benefits and G&A);
 - (C) Actual cost of Government-provided material, utilities, support services and appropriate overheads.
- (2) Reimbursement of Government Direct Labor Support
- (i) For those projects where Government personnel will provide direct labor support, the Contractor will be required to forward advance payments to NASA based upon the estimated number of hours of direct Government support needed. Payment shall be made to NASA KSC prior to the initiation of each project utilizing Government personnel.
 - (ii) Payment shall be made in the form of a check payable to "NASA Kennedy Space Center" and sent to:

NASA Shared Service Center (NSSC) – FMD Accounts Receivable
Attn: For the Accounts of Kennedy Space Center
Bldg. 1111, C Road
Stennis Space Center, MS 39529
 - (iii) NASA KSC's activities under or pursuant to this provision are subject to the availability of appropriated funds, and no provision herein shall be interpreted to require obligations or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341.
 - (iv) NASA KSC will send a final billing to the Contractor for the services rendered by Government personnel as soon as possible after the completion of each project. Any overpayment to NASA following completion of a project will be promptly reimbursed to the Contractor.
- (d) Priority of Use – The Contractor shall schedule and manage use of assigned Government furnished property to accommodate contract work and Work for Others in a manner to assure the timely, within cost, delivery of quality products and services for all. If the Government requires use of the property being used for Work for Others, the Government work shall take precedence and the Contractor shall immediately proceed with the Government work. NASA will make a reasonable effort to avoid disrupting ongoing and planned Work for Others.
- (e) Liability and Risk of Loss:
- (1) General:
- (i) The Contractor and Others shall not make any claims against the U.S. Government or U.S. Government contractors or subcontractors, for damage arising from or related to activities under this provision, whether such damage is caused by negligence or otherwise, except in the case of willful misconduct.

back to the area perimeter gate at the end of the workday. No "to be escorted" personnel will leave the immediate work area without an appropriately badged escort.

- iii. The Government will provide, at no cost to the contractor, investigative services for employees/workers escorts.
- iv. The prime contractor is responsible for providing escort services for any of his employees and/or any subcontractor employees who are not approved for unescorted access. The Government will not provide escort service under this contract. The contractor shall be responsible for all delays and costs caused by its failure to provide for unescorted access. All requests for unescorted access by subcontractors will be submitted through the prime contractor to the COTR for processing by the NASA Protective Services Office, or its designee, PSSO.
- v. One or more on-site training classes will be required for admittance to the controlled access areas. The total training will not exceed four hours. Contractors may schedule any required training for their employees by contacting the COTR or designee. The contractor shall maintain a record of employees receiving the training.

H.43 NFS 1852.228-76 CROSS-WAIVER OF LIABILITY FOR INTERNATIONAL SPACE STATION ACTIVITIES. (DEVIATION)

(a) The Intergovernmental Agreement Among the Government of Canada, Governments of Member States of the European Space Agency, the Government of Japan, the Government of the Russian Federation, and the Government of the United States of America concerning Cooperation on the Civil International Space Station (IGA) for the International Space Station (ISS) contains a cross-waiver of liability provision to encourage participation in the exploration, exploitation, and use of outer space through the ISS. The Parties intend that this cross-waiver of liability be broadly construed to achieve this objective.

(b) As used in this clause, the term:

(1) "Agreement" refers to any NASA Space Act agreement that contains the cross-waiver of liability provision authorized by 14 CFR Part 1266.102.

(2) "Damage" means:

- (i) Bodily injury to, or other impairment of health of, or death of, any person;
- (ii) Damage to, loss of, or loss of use of any property;
- (iii) Loss of revenue or profits; or
- (iv) Other direct, indirect, or consequential damage.

(3) "Launch Vehicle" means an object, or any part thereof, intended for launch, launched from Earth, or returning to Earth which carries payloads or persons, or both.

(4) "Partner State" includes each Contracting Party for which the IGA has entered into force, pursuant to Article 25 of the IGA or pursuant to any successor agreement. A Partner State includes its Cooperating Agency. It also includes any entity specified in the Memorandum of Understanding (MOU) between NASA and the Government of Japan's Cooperating Agency in the implementation of that MOU.

(5) "Party" means a party to a NASA Space Act agreement involving activities in connection with the ISS and a party that is neither the prime contractor under this contract nor a subcontractor at any tier.

(6) "Payload" means all property to be flown or used on or in a Launch Vehicle or the ISS.

(7) "Protected Space Operations" means all Launch or Transfer Vehicle activities, ISS activities, and Payload activities on Earth, in outer space, or in transit between Earth and outer space in implementation of the IGA, MOUs concluded pursuant to the IGA, implementing agreements,

and contracts to perform work in support of NASA's obligations under these Agreements. It includes, but is not limited to:

(i) Research, design, development, test, manufacture, assembly, integration, operation, or use of Launch or Transfer Vehicles, the ISS, Payloads, or instruments, as well as related support equipment and facilities and services; and

(ii) All activities related to ground support, test, training, simulation, or guidance and control equipment and related facilities or services. "Protected Space Operations" also includes all activities related to evolution of the ISS, as provided for in Article 14 of the IGA. "Protected Space Operations" excludes activities on Earth which are conducted on return from the ISS to develop further a Payload's product or process for use other than for ISS-related activities in implementation of the IGA.

(8) "Related Entity" means:

(i) A contractor or subcontractor of a Party or a Partner State at any tier;

(ii) A user or customer of a Party or a Partner State at any tier; or

(iii) A contractor or subcontractor of a user or customer of a Party or a Partner State at any tier.

The terms "contractor" and "subcontractor" include suppliers of any kind.

(9) "Transfer Vehicle" means any vehicle that operates in space and transfers Payloads or persons or both between two different space objects, between two different locations on the same space object, or between a space object and the surface of a celestial body. A "Transfer Vehicle" also includes a vehicle that departs from and returns to the same location on a space object.

(c)(1) The Contractor agrees to a cross-waiver of liability pursuant to which it waives all claims against any of the entities or persons listed in paragraphs (c)(1)(i) through (c)(1)(iv) of this clause based on Damage arising out of Protected Space Operations. This cross-waiver shall apply only if the person, entity, or property causing the Damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations. The cross-waiver shall apply to any claims for Damage, whatever the legal basis for such claims, against:

(i) A Party as defined in (B)(5) above;

(ii) A Partner State other than the United States of America;

(iii) A Related Entity of any entity identified in paragraph (c)(1)(i) or (c)(1)(ii) of this clause; or

(iv) The employees of any of the entities identified in paragraphs (c)(1)(i) through (c)(1)(iii) of this clause.

(2) In addition, the contractor shall, by contract or otherwise, extend the cross-waiver of liability set forth in paragraph (c)(1) of this clause to its subcontractors at any tier by requiring them, by contract or otherwise, to:

(i) Waive all claims against the entities or persons identified in paragraphs (c)(1)(i) through (c)(1)(iv) of this clause; and

(ii) Require that their subcontractors waive all claims against the entities or persons identified in paragraphs (c)(1)(i) through (c)(1)(iv) of this clause.

(3) For avoidance of doubt, this cross-waiver of liability includes a cross-waiver of claims arising from the *Convention on International Liability for Damage Caused by Space Objects*, which entered into force on September 1, 1972, where the person, entity, or property causing the Damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations.

(4) Notwithstanding the other provisions of this clause, this cross-waiver of liability shall not be applicable to:

(i) Claims between the Government and its own contractors or between its own contractors and subcontractors;

(ii) Claims made by a natural person, his/her estate, survivors or subrogees (except when a subrogee is a Party to an Agreement or is otherwise bound by the terms of this cross-waiver) for

bodily injury to, or other impairment of health of, or death of, such person;

- (iii) Claims for Damage caused by willful misconduct;
- (iv) Intellectual property claims;
- (v) Claims for Damage resulting from a failure of the contractor to extend the cross-waiver of liability to its subcontractors and related entities, pursuant to paragraph (c)(2) of this clause; or
- (vi) Claims by the Government arising out of or relating to the contractor's failure to perform its obligations under this contract.

(5) Nothing in this clause shall be construed to create the basis for a claim or suit where none would otherwise exist.

(6) This cross-waiver shall not be applicable when 49 U.S.C. Subtitle IX, Chapter 701 is applicable.

(End of clause)

**H.44 NFS 1852.228-78 CROSS-WAIVER OF LIABILITY FOR SCIENCE OR SPACE
EXPLORATION ACTIVITIES UNRELATED TO THE INTERNATIONAL SPACE STATION
(DEVIATION)**

(a) The purpose of this clause is to extend a cross-waiver of liability to NASA contracts for work done in support of Agreements between Parties involving Science or Space Exploration activities, unrelated to the International Space Station (ISS), but which involve a launch. This cross-waiver of liability shall be broadly construed to achieve the objective of furthering participation in space exploration, use, and investment.

(b) As used in this clause, the term:

- (1) "Agreement" refers to any NASA Space Act agreement that contains the cross-waiver of liability provision authorized in 14 CFR 1266.104.
- (2) "Damage" means:
 - (i) Bodily injury to, or other impairment of health of, or death of, any person;
 - (ii) Damage to, loss of, or loss of use of any property;
 - (iii) Loss of revenue or profits; or
 - (iv) Other direct, indirect, or consequential Damage;
- (3) "Launch Vehicle" means an object, or any part thereof, intended for launch, launched from Earth, or returning to Earth which carries Payloads or persons, or both.
- (4) "Party" means a party to a NASA Space Act agreement for Science or Space Exploration activities, unrelated to the ISS, but which involve a launch and a party that is neither the prime contractor under this contract nor a subcontractor at any tier hereto.
- (5) "Payload" means all property to be flown or used on or in a Launch Vehicle.
- (6) "Protected Space Operations" means all Launch or Transfer Vehicle activities and Payload activities on Earth, in outer space, or in transit between Earth and outer space in implementation of an Agreement for Science or Space Exploration activities, unrelated to the ISS, but which involve a launch. Protected Space Operations begins at the signature of the Agreement and ends when all activities done in implementation of the agreement are completed. It includes, but is not limited to:
 - (i) Research, design, development, test, manufacture, assembly, integration, operation, or use of Launch or Transfer Vehicles, Payloads, or instruments, as well as related support equipment and facilities and services; and
 - (ii) All activities related to ground support, test, training, simulation, or guidance and control equipment, and related facilities or services.

Protected Space Operations excludes activities on Earth which are conducted on return from space to develop further a Payload's product or process other than for the activities within the scope of an Agreement.

(7) "Related entity" means:

- (i) A contractor or subcontractor of a Party at any tier;
- (ii) A user or customer of a party at any tier; or
- (iii) A contractor or subcontractor of a user or customer of a Party at any tier.

The terms "contractors" and "subcontractors" include suppliers of any kind.

(c) Cross-waiver of liability:

(1) The contractor agrees to a waiver of liability pursuant to which it waives all claims against any of the entities or persons listed in paragraphs (c)(1)(i) through (c)(1)(iv) of this clause based on Damage arising out of Protected Space Operations. This cross-waiver shall apply only if the person, entity, or property causing the Damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations. The waiver shall apply to any claims for Damage, whatever the legal basis for such claims, against:

- (i) A Party;
 - (ii) A Party to another NASA Agreement or contract that includes flight on the same Launch Vehicle;
 - (iii) A Related Entity of any of the entities identified in (c)(1)(i) or (c)(1)(ii) of this clause; or
 - (iv) The employees of any of the entities identified in (c)(1)(i) through (c)(1)(iii) of this clause.
- (2) The contractor agrees to extend the cross-waiver of liability as set forth in paragraph (c)(1) of this clause to its own subcontractors at all tiers by requiring them, by contract or otherwise, to:
- (i) Waive all claims against the entities or persons identified in paragraphs (c)(1)(i) through (c)(1)(iv) of this clause; and
 - (ii) Require that their Related Entities waive all claims against the entities or persons identified in paragraph (c)(1)(i) through (c)(1)(iv) of this clause.

(3) For avoidance of doubt, this cross-waiver includes a cross-waiver of claims arising from the *Convention on International Liability for Damage Caused by Space Objects*, which entered into force on September 1, 1972, where the person, entity, or property causing the Damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations.

(4) Notwithstanding the other provisions of this clause, this cross-waiver of liability shall not be applicable to:

- (i) Claims between the Government and its own contractors or between its own contractors and subcontractors;
- (ii) Claims made by a natural person, his/her estate, survivors, or subrogees (except when a subrogee is a Party to an Agreement or is otherwise bound by the terms of this cross-waiver) for bodily injury to, or other impairment of health, or death of such person;
- (iii) Claims for Damage caused by willful misconduct;
- (iv) Intellectual property claims;
- (v) Claims for damages resulting from failure of the contractor to extend the cross-waiver of liability to its subcontractors and related entities, pursuant to paragraph (c)(2) of this clause; or
- (vi) Claims by the Government arising out of or relating to a contractor's failure to perform its obligations under this contract.

(5) Nothing in this clause shall be construed to create the basis for a claim or suit where none would otherwise exist.

(6) This cross-waiver shall not be applicable when 49 U.S.C. Subtitle IX, Chapter 701 is applicable.

(End of clause)